

(vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and

(vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.

(c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see § 40.271).

Subpart M—Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:

(1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.

(i) If the confirmation test is taking place at a different location from the screening test (see § 40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.

(ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.

(iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.

(2) Concerning the waiting period, you must tell the employee:

(i) Not to eat, drink, put anything (*e.g.*, cigarette, chewing gum) into his or her mouth, or belch;

(ii) The reason for the waiting period (*i.e.*, to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) That following your instructions concerning the waiting period is to the employee's benefit; and

(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

(3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.

(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.

(c) Complete Step 1 of the ATF.

(d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

(e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in § 40.253, not another screening test.

(f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.

(g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process: